

January 23, 2008

**DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY**

**Appeal**

Name of Petitioner: The Florida Times-Union

Date of Filing: December 19, 2007

Case Number: TFA-0235

On December 19, 2007, the Florida Times-Union (Times-Union) filed an Appeal from a determination issued to it by the Department of Energy's Office of the Executive Secretariat (OES). In that determination, OES responded to a request for information that the Times-Union filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require OES to perform an additional search and either release any newly discovered responsive documents or issue a new determination justifying the withholding of any portions of those documents.

**I. Background**

On October 15, 2007, the Times-Union sent a FOIA request to the FOIA and Privacy Act Office at DOE Headquarters (DOE/FOIA), for "any records relating to a presentation by Under Secretary Robert Card on July 24, 2003 to the International Energy Advisory Council." *See* Letter from Florida Times-Union to FOIA Officer, U.S. Department of Energy (October 15, 2007) (Request Letter). DOE/FOIA forwarded the request to OES because any document responsive to the request, if it existed, would fall under the jurisdiction of that office.

OES conducted a search of the electronic Document Online Coordination System (eDOCS) which yielded no documents responsive to the Times-Union's request. *See* Letter from Carolyn Matthews, OES, to Florida Times-Union (November 1, 2007). On December 18, 2007, the Times-Union filed this Appeal challenging the adequacy of the search conducted for responsive documents. *See* Letter from Florida Times-Union to OHA (received December 19, 2007). In its Appeal, the Times-Union also provided additional information to assist the Department in locating responsive material. *Id.*

**II. Analysis**

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990) (citations omitted). "[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Dep't of State*, 779 F.2d 1378, 1384-85 (8<sup>th</sup> Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact

inadequate. *See, e.g., Todd J. Lemire*, 28 DOE ¶ 80,239 (August 26, 2002) (Case No. VFA-0760).\*

In reviewing this Appeal, we contacted OES to ascertain the scope of its search for responsive documents. *See* Email from Avery Webster, OHA, to Carolyn Matthews, OES (December 20, 2007). OES informed us that it conducted a search of only the eDOCS database. *See* Email from Carolyn Matthews, OES, to Avery Webster, OHA (December 26, 2007). OES did not conduct a search for responsive documents of any other agency records.

During the pendency of this Appeal, OES recognized that it should have conducted a broader search for responsive documents. OES has indicated to us that it is now conducting a new search of its records. In light of this information, we will remand this matter to DOE/FOIA to oversee OES's new search for the documents that the Times-Union has requested. Any additional responsive documents that are located will be identified and released to the Times-Union, or the basis for their withholding will be explained in a new determination letter, with specific reference to one or more FOIA exemptions.

It Is Therefore Ordered That:

- (1) The Appeal filed by the Florida Times-Union on December 18, 2007, OHA Case No. TFA-0235, is hereby granted as specified in Paragraph (2) below and denied in all other aspects.
- (2) This matter is hereby remanded to the FOIA and Privacy Act Office which shall issue a new determination in accordance with the instructions set forth above.
- (3) This is a final order of the Department of Energy of which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos  
Director  
Office of Hearings and Appeals

Date: January 23, 2008

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\* All OHA decisions issued after November 19, 1996 may be accessed at <http://www.oha.doe.gov/foia1.asp>.